

### **REMARKS**

This is a full and timely submission to the Non-Final Office Action mailed May 20, 2008. A request for a one month extension of time is submitted herewith. After the entry of the present amendments, claims 17, 19-20, 30-32, 34, 36-37, and 42-45 will be pending in this application. Claims 17, 30, 32, 34, 36, 37, and 44-45 have been amended, claims 17 and 30 being re-written in independent form, to further clarify the invention claimed by claims 17, 30, 32, 34, 36, 37, and 44-45. Claims 15-16 and 29 have been cancelled.

Applicants respectfully thank the Examiner for speaking with Counsel for Assignee on September 15, 2008, and submit that the submitted amendments are in accordance with that discussion. Consideration of the enclosed amendments and remarks is requested, and Applicants respectfully submit that the claims are now in condition for allowance and request that all rejections be withdrawn.

#### **I. REJECTION OF CLAIMS 15-16, 36 and 44-45 UNDER § 112**

The Office Action rejected claims 15-16, 36 and 44-45 under 35 U.S.C. § 112, second paragraph, “as being indefinite for failing to particularly point out and distinctly claim the subject matter which Assignee regards as the invention.” Applicants respectfully traverse the rejection.

Applicants respectfully thank the Examiner for noting the incorrect dependency of claims 44 and 45 being dependent from cancelled claim 28. Claims 44 and 45 have been amended to correct the dependency and now depend from amended independent claim 30. The Office Action also states

[w]ith respect to claims 16 and 15, both the selected network hub server and the remote network server are recited for polling and computing weighted averages over the network devices. It is not clear which one actually does that. Further, the selected hub server is recited to communicate with the remote server only and not with the network devices. It does not appear that the hub server is able to poll the network devices.

Claims 15 and 16 have been cancelled, and their limitations incorporated into amended independent claims 17 and 36. As was noted on the afore-mentioned call with the examiner, and shown in dependent claims 44 and 45, each network hub server and remote network server is capable of deriving state information from at least one network device. Both the network hub server and the remote network server are capable of polling and computing weighted averages of network devices as recited in amended claims 17 and 36. Claim 36 has been amended to clarify that the network hub server performs the step to derive state information when the remote network server is inoperable.

For the reasons set forth above, Applicants respectfully submit that claims 36, and 44-45, as amended, are now in condition for allowance and request that the rejections be withdrawn.

## **II. REJECTION OF CLAIMS 15-16, 29, AND 44-45 UNDER § 103(a)**

The Office Action rejected claims 15-16, 29 and 44-45 as unpatentable over Majkowski, U.S. Patent No. 6,564,336 (“*Majkowski*”) in view of *Levine*, U.S. Patent No. 7,028,038 (“*Levine*”). Assignee respectfully traverses the rejection.

The Office Action states,

Levine teaches a monitoring system for a network. In Levine a ping is sent to a monitored device. A response from the monitored device is used to calculate a weighted average. It would have been

obvious to a person of ordinary skill in the art to use the system of Levine to calculate the weighted average in Majkowski so as to analyze the data obtained from monitoring the network device such that the purpose of monitoring the device can be achieved.

As noted in Applicants' previous response, *Majkowski* would not have a use for computing a weighted average because the system of *Majkowski* only monitors the state of a primary data storage server to determine whether the primary server is active.

The Office Action also states that column 2, lines 46-65 of *Levine* discloses computing a weighted average using responses from polling network devices. As noted in the call between the undersigned Counsel and the Examiner, *Levine* describes computing a weighted average to calculate packet loss and latency over a specific path. In other words, *Levine* discloses computing and storing data regarding a network link, *not* about a network device.

However, the Office Action also states that,

[c]laims 36, 17, 42, 32, 37, 30, 40, and 34 would be given favorable consideration if claims 36, 17, 37, 30, and 34 are rewritten in independent form to incorporate all the limitations in the intervening claims.

In order to advance allowance of the pending claims, claims 17 and 30 have been amended and are rewritten in independent form to incorporate the limitations of claim 16 and 30, respectively. Claim 36 has been amended to include the limitations of claim 15 and now depends from independent claim 17, incorporating all of the intervening limitations therein. Claim 32 has been amended to depend from independent claim 17, incorporating all of the intervening limitations therein. Claim 34 has been amended to depend from claim 30, now including all of the intervening limitations therein. Claim 37 has been amended to depend

from claim 36, including all of the intervening limitations therein. Claim 42 and claims 43-45 have been amended to depend from independent claims 17 and 30, respectively, incorporating all of the intervening limitations therein.

The Office Action also specifically rejected claims 15, 44, and 45 over *Majkowski*. Claim 15 has been cancelled, and Applicants submit that the amended dependency of claims 44 and 45 to amended independent claim 30 and the inclusion of its limitations in these claims make this rejection moot.

For the reasons stated above, Applicants respectfully submit that all claims are now in condition for allowance and request withdrawal of the rejection and prompt allowance.

**CONCLUSION**

Claims 17, 19-20, and 30-32, 34, 36-37, and 42-45 remain pending in this application. Applicants also submit a request for a one month extension of time accompanying this response and these Amendments. It is respectfully submitted, that all claims are now in condition for allowance. The Examiner is invited and encouraged to contact the undersigned attorney of record at (404) 745-2434 if such contact will facilitate a Notice of Allowance. If any additional fees are due, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,

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